IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2126 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESHBHAI DEVABHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2126 of 2003

MR MR PRAJAPATI for Petitioner

MR KP RAVAL, AGP for Respondents

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 13/06/2003

ORAL JUDGEMENT

1. Heard Mr.M.R.Prajapati, learned advocate for the petitioner and Mr.K.P.Raval, learned AGP for the respondents.

2. In this present petition, rule has been issued by this Court [Coram : P.B.Majmudar,J.] on 04.03.2003, made

it returnable after six weeks. In the present petition, the order of detention dated 18.01.2003 has been passed by the Commissioner of Police, Ahmedabad City under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as the "PASA Act"] has been challenged by the petitioner on various grounds. At the time, when the order of detention was executed, the detenu was detained in Junagadh District Jail. According to the ground of detention, two offences have been registered against the present petitioner dated 26.09.2002 and 16.01.2003 under the Prohibition Act. In respect of the second offence, the petitioner was arrested on 16.01.2003 and he was in police remand, at the time when the order of detention has been passed. Two unregistered offences have been disclosed by the secret witnesses dated 15.12.2002 and 02.01.2003. The statements of the secret witnesses were recorded by the Sponsoring Authority on 17.01.2003 and the said statements of the secret witnesses were verified by the Detaining Authority on 18.01.2003 and on the very same day, the order of detention has been passed. The Detaining Authority as well as State Government have filed affidavit-in-reply. Both are taken on record. The copies thereof have been served to the petitioner.

3. Mr.M.R.Prajapati, learned advocate for the petitioner has raised various contention to challenge the order of detention, but according to him, two contentions are enough to vitiate the order of detention. He has submitted that at the time when the order of detention has been executed, the detenu was in police custody. This fact has been disclosed in the ground of detention at page-15 of the last paragraph. He has also submitted that on the date on which the Detaining Authority has verified the statements of the secret witnesses, on the very same day the order of detention has been passed. For these two contentions, he has relied upon two decisions of this Court in Special Civil Application Nos.2866, 2867 and 2868 of 2003 dated 10.06.2003 and in respect to the second contention he has relied upon decision of this Court, in the case of Ranubhai Bhikhabhai Bharwad (Vekaria) Vs. State of Gujarat and anothers, reported in 2000 (3) GLR 2696.

4. Mr.K.P.Raval, learned AGP for the respondents has submitted that the Detaining Authority has rightly appreciated the facts in one case and he was released on bail which related to the Prohibition Act. He has also submitted that on 17.01.2003, the Sponsoring Authority has forwarded the proposal to the Detaining Authority and, thereafter, the Detaining Authority has verified the

statements of the secret witnesses and on the very same day, the order of detention has been passed. He has also submitted that the statements, which were given by the secret witnesses to the Sponsoring Authority have been personally verified by the Detaining Authority and genuineness and fear expressed by the secret witnesses have also been examined by the Detaining Authority and after that the Detaining Authority has given subjective satisfaction, which is based on material placed before him. Therefore, he has submitted that the Detaining Authority has applied his mind and after considering the entire material, which was placed before him, passed the legal and valid order of detention against the present petitioner. If the detention order has not been passed against the petitioner, then it will adversely effected to the maintenance of public order and, therefore, the Detaining Authority has rightly been passed the order of detention and no interference is required by this Court.

5. I have perused the entire record produced by the petitioner and I have also perused the affidavit-in-reply. I have considered the submissions made by both the learned advocates to the effect that in respect to these two grounds, whether the detention order is required to be vitiated or not and in respect to first offence, he was in police remand or not. The petitioner may approach to the Competent Court for bail and even the bail is granted then the petitioner will indulge the same activities in the society. The question is whether the Detaining Authority is applied his mind in respect to that likelihood bail application to the Competent Court in respect to the two offences. In case, if he filed an application for bail to the Competent Court in respect to the two offences then there is any likelihood to the Competent Court grant bail or that no reasons have been given by the Detaining Authority. This Court may presume the reasons in light of the factual aspect which canvassed by Mr.Raval, learned AGP. It is subjective satisfaction of the Detaining Authority not either learned AGP or any other person. The authority who has justified his subjective satisfaction which is reflected on the grounds of detention, if it is not reflected on the grounds of detention, then the order of detention is vitiated. This aspect has been examined by this Court in detail after considering the decisions of the Hon'ble Apex Court and this Court in Special Civil Application Nos.2866, 2868 and 2868 of 2003 dated 10.06.2003, which is covered to the facts of the present case.

6. In respect to the second contention, on 17.01.2003, the Sponsoring Authority has recorded the

statements of the secret witnesses and on the very next day, after receiving the proposal sent by the Sponsoring Authority, the statements have been verified by the Detaining Authority. From the record itself seems that the order of detention has been passed hurriedly and mechanical manner because on 17.01.2003, the Sponsoring Authority has recorded the statements of the secret witnesses and, on the very same day, the proposal sent to the Detaining Authority and on the next day, the Detaining Authority has verified the statements on the same day, the order of detention has passed and not only the detention order has been executed. In between no such time to the Detaining Authority so he can verify the genuineness of the incident which has been disclosed by the secret witnesses, whether the incident narrated by the witnesses is genuine or not. This aspect has not been examined by the Detaining Authority. Therefore, the view taken by this Court in case of Ranubhai Bhikhabhai Bharwad (Vekaria) and in Special Civil Application No.1692 of 1999 dated 07.07.1999, according to my opinion, the order of detention is required to be set aside only on this ground.

7. In the result, the present petition is allowed. The order of detention dated 18.01.2003 passed by the Commissioner of Police, Ahmedabad City, against the detenu Shri Rameshbhai Devabhai Parmar detained at Junagadh District Jail is hereby quashed and set aside. The petitioner, unless is required to be detained in some other case, be released forthwith. Rule is made absolute accordingly. Direct service is permitted.

[H.K.Rathod,J.]

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